COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 1038 of 2001
(Old No. 272/1997)

New India Assurance Company Ltd.
Uttarkashi **....Appellant.**

Versus

Smt. Sartia and others.

.....Respondents.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (in short the Act) against the judgment and Award, dated 3-1-1997, passed in M.A.C. No. 26 of 1996, Smt. Sarita and others Vs. Smt. Sarojani Devi and others, by the Motor Accident Claims Tribunal/District Judge, Uttarakashi ***(hereinafter referred to as the Tribunal),*** whereby the learned Tribunal has awarded a sum of Rs. 2,02,000/- along with interest @ 12% per annum in favour of the claimants-respondents nos. 1 to 3 as against the Opposite party No. 3-appellant. Aggrieved, the Insurance Company has come up in appeal with a prayer to set aside the impugned judgment and award with costs.

Brief facts, giving rise to the present appeal, are that on 5.7.1996, deceased Munna Lal, husband of the claimant no. 1, was coming on scooter from bus station to his house. At about1.30 p.m. offending Truck No. U.P. 09/0153, driven rashly and negligently by its driver, came from the opposite direction and collided with the scooter with the result the deceased Munna Lal sustained grievous injuries and succumbed to his injuries on the spot. It is also alleged that the deceased was 21 years of age and was running a shop of general marchandize, besides doing agriculture, animal husbandry etc. and earning Rs. 5000/- per moth at the time of his death. The claimants,

Who are dependents of the deceased, preferred the claim for the amount of Rs. 10,40,000/- as compensation for the death of Munna Lal.

Opposite Parties No. 1/Respondent no. 1 and 2, owner and driver of the offending Truck in question contested the claim petition by filing joint written statement alleging therein that the driver of the truck was not driving the vehicle rashly and negligently, rather he was driving the truck cautiously with moderate speed. The accident was the result of the negligence on part of the deceased.

The Opposite Party No. 3- the appellant contested the petition by filing its written statement on the ground inter alia that the truck was not being driven rashly and negligently at the time of the accident. The accident was the result of negligence on the part of the deceased, who was going on scooter. It has also been alleged that the insurer of the scooter was not impleaded as party and the compensation claimed was highly exaggerated.

On the pleadings of the parties, following Issues were framed by the learned Tribunal :

1. ***Whether the claimants are the legal representatives and dependants of the deceased?***
2. ***Whether the accident was caused due to rash and negligent driving of vehicle No. 09/0153 at the time of accident?***
3. ***To what amount of compensation, if any , are the claimants entitled and from which of the O.Ps.?***
4. ***Whether there was contributory negligence or negligence of scooter driver in the accident? If so, its effect?***

The learned Tribunal took Issue Nos. 1 for decision and after considering the oral and documentary evidence before it, came to the conclusion that claimant no. 1 Smt. Sarita being the widow of the deceased was the only dependant and L.R. of the deceased. The

Learned Tribunal took Issue Nos. 2 and 4 together for decision. It came to the conclusion that form the oral and documentary evidence on record, it was established that the accident was the result of rash and negligent driving by the driver of offending Truck alone and it was not a case of contributory negligence. The learned Tribunal has discussed the entire evidence in detail while arriving at the conclusion on these issues. Accordingly, both the issues were decided. On Issue No. 3, the learned Tribunal has found that the deceased was running as shop of his own and the tribunal assessed the annual income of the deceased at Rs. 21,600/- and after deducting 1/3rd as personal expenses of the deceased, annual loss of income has been worked out as Rs. 14,400/- The Tribunal also found that the age of the deceased at the time of accident was about 21 years, therefore, multiplier of 20 was applied, thereby loss of income due to death of the deceased was worked out as Rs. 2,88,000/- and out of this amount, 1/3rd was further deducted for lump sum payment of compenstion. In addition to it, the learned Tribunal also warded Rs. 10,000/- towards loss of consortium, pain and agony, funeral expenses, etc. Accordingly, amount of Rs. 2,02,000/- was awarded along with interest at the rate of 12% per annum to the claimant Smt. Sarita, recoverable from the appellant-Insurance Company.

It has been contended on behalf of the appellant that the Tribunal has fallen in error in arriving at the conclusion that the monthly income of the deceased was Rs. 1500/- and that it was a case of contributory negligence.

We have heard learned counsel for both the parties and have gone through the entire material on record. We have also carefully gone through the provisions of law as contained in Sections 149, 170 and 173 of the Act.

It is most significant mention here that the grounds of challenge available to the insurer-appellant have been enumerated in sub-Section (2) of Section 149 of the Act and no other ground is

available to the Insurance Company. Section 170 of the Motor Vehicle Act deals with impleadment of insurer in certain cases. On a careful perusal of the said provisions of law, we are not inclined to accept the contentions raised on behalf of the insurer-appellant, because under the Act, the insurer has no right to challenge the judgment and award passed by the learned Tribunal except on the grounds as enumerated under sub-Section (2) of Section 149 of the Motor Vehicles Act, 1988. The law provides that appeal by the insurer can be filed on limited grounds and the grounds of challenge cannot be enlarged . We are fortified in our view by the Apex Court judgment in the Case of ***"National Insurance Company Ltd. Vs. Nicolletta Rohtagi and others" (2003 (3) T.A..C. 293 (Supreme Court).*** In that case, it has been observed by the Apex Court that "***even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle".*** This, in view of the law laid down by the Apex Court reported in ***2003(3) T.A.C. 293 (S.C.) (supra)***, which is fully applicable in the present appeal, none of the contentions raised on behalf of the appellant is tenable and has to be ignored outright.

Accordingly, the appeal has no merit and deserves to be dismissed.

The appeal is dismissed. No order as to costs.

10-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**

RCP